DISCUSSION PAPER ON

COMPENSATION FOR CHRONIC OCCUPATIONAL STRESS

January 30, 1989

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Workers' Compensation Board / Commission des accidents du travail

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Dear Manual Subscriber,

The Ontario Workers' Compensation Board is reviewing its policy on chronic occupational stress. As part of the policy development process, the Board is consulting with its stakeholders. Since this policy review raises novel issues in both science and law that are of considerable public interest, a discussion paper is being circulated for wide consultation.

We would welcome comments that you may have on the issues highlighted in this paper. The Board is particularly interested in receiving input respecting the following questions:

1. Are claims for chronic stress compensable under the Workers' Compensation Act?

2. If chronic stress claims are compensable, what legal test should apply in adjudication?

3. To what extent should WCB adjudicators rely on the scientific literature which has identified major occupational and non-occupational stress factors?

4. How should psychiatric and psychological evidence be used in determining the cause of a stress-related disability?

5. Given the complex etiology of stress-related disabilities, would adjudication of these claims require a detailed investigation of the worker's personal life?

6. Should personnel decisions such as job demotion, transfer and layoff be considered relevant occupational stress factors in workers' compensation?

The consultation phase of this policy review is scheduled for completion by March 13, 1989. Your responses should be forwarded by this date to me at the following address: Workers' Compensation Board, 22nd Floor, 2 Bloor Street East, Toronto, Ontario, M4W 3C3. Due to the anticipated volume of response on this issue, the Board regrets that it cannot accept telephone inquiries concerning the content of the discussion paper.

All comments that are received will be available to the public through the Board's library.

Yours truly,

Paul Holyoke

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/jc

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CHRONIC OCCUPATIONAL STRESS

EXECUTIVE SUMMARY

I. ISSUE

° In light of recent awareness of the significance of psychosocial factors at work the Ontario Workers' Compensation Board is revieving its policy on compensation for chronic stress. Although the Board currently allovs mental stress claims where the stress is sudden, shocking or life-threatening, it has not allowed claims arising from long term or chronic stress.

The key questions involved in this issue are:

Are claims for chronic stress compensable under the Workers' Compensation Act?

If chronic stress claims are compensable, what legal test should apply in adjudication?

To what extent should WCB adjudicators rely on the scientific literature which has identified major occupational and non-occupational stress factors?

To what extent should psychiatric and psychological evidence be used in determining the cause of the stress-related disability?

Given the complex etiology of stress-related disabilities, would adjudication of these claims require a detailed investigation of the worker's personal life?

Should personnel decisions such as job demotion, transfer and layoff be considered relevant occupational stress factors in workers' compensation?

II. DISCUSSION

Definition

° In common usage, "stress" is used to refer both to the stimulus (e.g. job pressure or death of a family member) and the response (e.g. nervous breakdown or depression). In this paper "stressor" is used to define those factors that can cause a "stress response". "Stress-related disability" refers to the ill-health conditions that the individual may experience as a result of the stress response.

° In the legal literature, stress claims are generally classified in the following way:

Physical-Mental Claims
In these claims, a physical injury leads to a mental disability (for example, the loss of a leg which induces a depression).

Mental-Physical Claims
In these claims, a mental stimulus leads to a physical disability (for example, following a hold-up a cashier suffers a heart attack).

Mental-Mental Claims
In these claims, a mental stimulus leads to a mental disability (for example, a period of continuous overtime or harassment leads to disabling anxiety).

- This paper deals primarily with mental-mental claims.

Work-Relatedness

- The stress response involves the interaction among occupational stressors, non-occupational stressors and the individual's capacity to moderate their effects. It is typically a complex task to assess the significance of each of these variables. The scientific literature has, to some degree, identified the significant factors relevant to these key variables.

- While some occupations may seem inherently more stressful than others, ranking occupation by degree of stress is a complex task. Research in the 1970's attempted to identify the most stressful occupations but this approach was later abandoned because of methodological difficulties. Scientific enquiry in the 1980's has focused on identifying aspects of the work environment that are stressful regardless of occupation.

- The workplace stressors most frequently referred to in the literature are:

  Machine pacing of work rhythm and machine control of work methods

  Monotonous, repetitive work

  Lack of possibilities for contact with other people as part of the work

  Piece-rate and related payment systems

  "Authoritarian" and detailed control of the individual whether through individual or computer-based systems.

- Some of the literature distinguishes between intrinsic stressors, such as those listed above, from extrinsic stressors which are not inherent to the task itself but are part of the work context.

- Chronic stress claims are potentially compensable under the Workers' Compensation Act as either disablement or industrial disease, though the former is more likely than the latter.

WCAT

- In Decision No. 918 WCAT took the view that chronic mental stress can be compensated under the Workers' Compensation Act using the Supreme Court of

Maine's Townsend test. This test states that claims are compensable if either:

1. The worker was subjected to greater pressures and tensions than those experienced by an average employee and, taking into account the stresses of personal life, the occupational stress is a significant contributing factor

or

2. By clear and convincing evidence it is shown that the ordinary and usual work-related pressures predominated in producing the injury.

° In Saskatchevan and Quebec, chronic mental stress claims have been allowed. The remaining provincial Boards generally allow physical-mental claims and claims arising from acute stress.

° In the United States, there is a longer history of alloving chronic stress claims, but with considerable variety in approach. The states range from not allowing any claims for mental injury to treating mental-mental claims in the same manner as claims for physical injuries. Approximately 20 states allow chronic mental stress claims. In recent years some states while still alloving mental-mental claims have limited claims by imposing more stringent causation tests or by precluding claims related to bona fide personnel decisions.

Possible Legal Tests

° The following legal tests essentially represent the range of options open to the Board:

1. Mental-mental claims are never compensable.

2. Mental-mental claims are compensable only if there is a sudden stimulus.

3. Mental-mental claims are compensable where there is a "series of stressful incidents".

4. Mental-mental claims are compensable only if the stimulus is unusual. "Unusual" can mean:
   a) Greater than the stress of everyday life
      or
   b) Greater than the stress of ordinary employment
      "Ordinary employment" can involve a comparison of the worker's job with the following yardsticks.
      i) Fellow employees with the same employer;
      ii) Workers employed in similar jobs in that industry; or
      iii) The working world at large.

5. The Townsend test used in WCAT Decision No. 918.

6. Mental-mental claims are compensable whether or not the stimulus is unusual.

7. Mental-mental claims are compensable as an occupational disease.

III. CONSULTATION

° Since this policy review raises novel issues in both science and law that are of considerable public interest, the Board is consulting widely with interested parties as part of its policy development process.

COMPENSATION FOR CHRONIC OCCUPATIONAL STRESS

INTRODUCTION

In recent years the concept of the "working environment" has changed significantly. The field of occupational health and safety which traditionally concentrated on physical and chemical hazards has expanded to recognize the importance of psychosocial factors, including stress.

Noting this recognition, the Ontario Workers' Compensation Board (WCB) has begun a review of its policy on occupational stress. This background paper is designed to focus the consultation process which will form part of this review. The review concentrates on cases where both the cause of the disability and the disability itself are psychological in nature.

Although the Board presently allows compensation for psychotraumatic disability resulting from certain types of acute stress, it has not compensated cases of mental disability resulting from chronic mental stress. On July 11, 1988, the Workers' Compensation Appeals Tribunal (WCAT) released Decision No. 918 which held that mental disabilities resulting from chronic workplace stress are compensable. This decision to allow chronic stress claims is in line with a developing trend in the United States.

The initial question which arises in this policy review is whether chronic mental stress claims are potentially compensable under the Workers' Compensation Act. If such claims are compensable, the Board must answer a number of key questions. These primarily concern the difficulty in determining causation, and particularly in assessing the relative significance of occupational and non-occupational stress in a given claim. Accordingly, the Board is seeking advice on the following questions:

- If chronic stress claims are compensable, what legal test should apply in adjudication?
- To what extent should WCB adjudicators rely on the scientific literature which has identified major occupational and non-occupational stress factors?
- How should psychiatric and psychological evidence be used in determining the cause of a stress-related disability?
- Given the complex etiology of stress-related disabilities, would adjudication of these claims require a detailed investigation of the worker's personal life?
- Should personnel decisions such as job demotion, transfer and layoff be considered relevant occupational stress factors in workers' compensation?

DEFINITION OF STRESS

The word "stress" has been used so diversely since the concept was first identified by Selye that its definition has become unclear. The term is often used interchangeably to refer both to the condition which stimulates a response and to the response itself. Selye offered the following definition of stress: "the non-specific response of the organism to any demands made upon it". The demands placed upon the individual are referred to as stressors.

Fundamental to this definition is the characterization of the stress response as being related to the make-up of the individual. Unlike many physical demands that may lead to broadly similar responses across groups of people, the response to psychological demands is not only unique to the individual but may be different within the same person at different times.

Occupational stress has been defined as the condition in which some occupational factors interact with the employee to disrupt his or her physiological or psychological equilibrium.[1]

In this paper "stressor" is used to define those factors that can cause a stress response. Stress refers to the response to those factors. Stress-related disability refers to the ill-health conditions which the individual may develop as a result of the stress response.

INTERACTIVE MODEL OF STRESS

It is therefore useful to view the stress response as the interaction between occupational and non-occupational stressors and the individual's capacity to moderate stress. Here it is important to consider how the scientific literature may help us in assessing the significance of these variables in a particular case. First, what has the scientific literature identified as the relevant factors to consider in measuring each of the variables in the interactive model? Second, how should we use these findings in adjudication?

WORKPLACE STRESSORS

The process of establishing a causal relationship between a single stressor and a stress-related disability is an extremely difficult task. However, there is some consensus in the scientific literature regarding significant workplace stressors. The following is a brief summary of this literature.

Referring to the extensive research completed in Scandinavia, Gardell and Gustavsen[2] state that the following conditions may be regarded as significant stressors:

1) Machine pacing of work-rhythm and machine control of work methods
2) Monotonous, repetitive work
3) Lack of possibilities for contact with other people as part of the ongoing work
4) Piece-rate and related payment systems
5) "Authoritarian" and detailed control of the individual whether through individual or computer-based systems.

In a review of research conducted by the National Institute for Occupational Safety and Health from 1971 to 1976, Smith, Colligan and Hurrell[3] identified the following stressors:

1) Machine pacing
2) Lack of control over work methods
3) Poor supervisory relations
4) Lack of social support.

In a study of managers, Hall and Savery[4] point to lack of autonomy at work as a significant stressor. The effects can be exacerbated by other stressors such as role conflict but may be moderated by factors such as salary increases.

Karasek[5] suggests that psychological strain occurs when stressors and individual control are unbalanced: "Evidence exists in man that psychological stress and its physiological correlates occur in high stressor, low control situations, particularly in the work environment."

Berggren, Hane and Ekberg[6] refer to studies that have identified stressors including monotonous work and uncontrollable work demands, such as machine pacing.

Berggren et. al. also refer to factors that operate in combination to produce particularly stressful working conditions. These include:

1) Quantitative work overload combined with qualitative work underload (e.g. the position of quality control inspector)

2) Time pressure combined with responsibility and constant attention (e.g. bus driver)

3) Highly repetitious work combined with a machine controlled work pace and an inflexible posture throughout the work shift (e.g. sawmill worker).

Cooper[7] and Fingret[8] have developed models of occupational stress that separate "intrinsic" and "extrinsic" stressors. Intrinsic stressors are inherent to the task itself while extrinsic stressors are part of the task context. Examples of intrinsic job stressors are work underload and work overload. Examples of extrinsic job stressors are role in the enterprise and organizational structure and climate.

HIGH STRESS OCCUPATIONS

If we can reliably identify certain occupations as particularly stressful, adjudication of claims from these occupations would be simplified. In effect this bears similarities to an occupational disease model. It could rely on epidemiological evidence or an assessment based on significant workplace stressors as identified by the scientific literature. In such cases a rebuttable presumption in favour of compensation could apply.

However, given the interactive and individualized nature of the stress response, it is unlikely that high risk occupations can be clearly identified. The

scientific literature is unable to identify a job that will be equally stressful for most individuals. The match between the individual and the job or the "job/person fit" may be more crucial to occupational stress than the nature of the job itself.

In a study to identify occupations exhibiting a high incidence of mental disorders Colligan, Smith and Hurrell[9] reviewed admissions to mental health institutions according to occupation. Their results indicate that the jobs of health technologist, waiter, practical nurse, dishwasher and warehouseman are included among the ten occupations which exhibited the highest incidence of mental health problems. However, because of the difficulty in isolating the relevant variables, it is hard to determine whether individuals with a particular vulnerability to mental health problems tend to select themselves for certain occupations. These authors caution that "...the data does not permit the conclusion that occupational differences in the incidence of mental health disorders are a function of job stress as opposed to other life stress events."

Clutterbuck[10] refers to the "paradox of blue collar employment". He suggests that blue collar workers seem to have a higher incidence of stress-related illnesses than white collar workers but are less likely to acknowledge this condition.

The methodological difficulties inherent in ranking occupations by stress level are substantial. According to an expert[11] in occupational stress at the National Institute for Occupational Safety and Health, current knowledge of this topic still leaves unanswered the question of whether certain jobs are inherently more stressful than others. It is his view that in the 1990's research will likely be addressing the issue of whether the workers who report subclinical symptoms of stress eventually develop diseases and, if they do, to identify the work environments that are responsible. In the early 1970's social scientists attempted to rank occupations according to their respective levels of stress. Since the late 1970's the approach in the scientific community has shifted to an examination of those aspects of the work environment that cross occupational boundaries as opposed to isolating specific occupations.

NON-WORKPLACE STRESSORS

As WCAT noted in Decision No. 918 ".. there are infinite sources of stress in everyone's life and it is virtually impossible to identify them all and assess the extent to which each source has contributed to any resulting disability."[12]

Psychologists have attempted to measure the relative impact of life events. The classic scale was developed by Holmes and Rahe[13] and ranks the relative severity of stressors such as death of a spouse, marital infidelity and financial problems. Staats[14] developed a more recent version which measures environmental, physical and psychological stressors. However, in considering their potential use as adjudicative tools, it should be noted that these scales are not designed to be administered in isolation to measure stress but as an adjunct to the clinical interview or as a research aid. These scales do not sufficiently discriminate between "personal life stress" and "work life stress" to pinpoint the cause of the disability.

STRESS MODERATORS

Numerous individual characteristics affect the stress response. These include[15]:

1) Past experience, such as having been through a similar experience previously
2) Learned behaviour, such as well developed problem-solving skills
3) Cognitive style, such as flexible thinking
4) Social and emotional support both at the workplace and in one's personal life
5) Sense of belonging, such as an affiliation with a religious, ethnic or national group
6) Person-environment fit - how well the worker's preferences and abilities match the demands of the job.

Social support as a stress moderator has received considerable attention in the literature. House[16] and Rogers[17] emphasize that people who are in socially supportive environments have a higher resistance to stress than those who are not.

USING CRITERIA FROM THE SCIENTIFIC LITERATURE IN ADJUDICATION

As outlined above, the scientific literature provides some guidance on relevant factors in assessing occupational and non-occupational stress and the individual's moderating capacity. But these criteria cannot be applied with considerable precision and cannot be regarded as all-inclusive. However, without the use of such criteria, adjudication would be entirely subjective, leading to inconsistency in decisions. In addition, little guidance would be provided to interested parties in preparing their cases.

USE OF PSYCHIATRIC EVIDENCE IN DETERMINING CAUSATION

Gradual mental stress claims are typically difficult to adjudicate because there is rarely any physical corroboration for either the source of the disability or the disability itself. Pinpointing causal relationship is also extremely difficult because every non-occupational aspect of a claimant's life is potentially an alternate source for the individual's mental problems. In adjudicating stress claims in the United States considerable reliance has been placed on psychiatric or psychological evidence. That evidence is used to identify the source or sources of mental stress and to evaluate the extent and character of the disability. It is also used to establish the causal relationship between the stress and the disability.

However, it has been argued that determining causation in mental-mental claims is an entirely speculative exercise. In supporting this view, Joseph[18] points to the Diagnostic and Statistical Manual of Mental Disorders (DSM-III) published by the American Psychiatric Association. This manual identifies numerous mental disorders and states that the cause of the majority of these disorders cannot be clearly determined. This implies that the effects of occupational and non-occupational stressors cannot be separated. As a result, the decision whether to compensate is basically subjective. Because of this situation, Professor Joseph contends that adjudication of these claims essentially becomes

a matter of policy. In other words, in claims where we cannot reliably determine causation we must make a policy decision whether to favour compensation or not. He maintains that this situation also applies in back and cardiac disorders where non-occupational factors often have a significant but probably indeterminable effect. As a solution, he proposes a disease fund separate from workers' compensation to compensate these disabilities.

The state of California has taken the opposite approach by assuming that psychiatry is capable of distinguishing the relative significance of occupational and non-occupational stressors. Administrative regulations which came into effect on August 1, 1987 require that psychological injuries be defined in terms of the diagnostic criteria in DSM-III. The regulations require that medical reports include an adequate history and documentation of conclusions by supporting findings. The psychiatrist must assess the extent of the disability in terms of the effect of the mental disorder on eight essential work functions. The psychiatrist is expected to reach a decision on causation. In doing so the doctor must consider the relationship of work exposure to disability, nonindustrial causes of the disability and whether the events in the workplace made an "active" or "passive" contribution to the disability.

CLASSIFICATION OF PSYCHOLOGICAL STRESS CLAIMS

Psychological stress can be divided into two types: acute and chronic. Acute stress refers to a response resulting from a discrete incident, for instance witnessing the death of a co-worker on the job. Chronic stress refers to situations where there is no critical incident but rather an accumulation of stress responses over time (for example, where an employee works overtime for an extended period or is subjected to constant harassment by a supervisor).

In the legal literature, Larson's classification[19] of stress claims is generally followed. He specifies three categories:

1) **Physical-Mental claims**

   In these claims, a physical injury leads to a mental disability (for example, the loss of a leg which induces a depression).

2) **Mental-Physical claims**

   In these claims, a mental stimulus leads to a physical disability (for example, following a hold-up a cashier suffers a heart attack).

3) **Mental-Mental claims**

   In these claims, a mental stimulus leads to a mental disability (for example, a period of continuous overtime or harassment leads to disabling anxiety).

CURRENT BOARD PRACTICE

Physical-Mental Claims

These claims are adjudicated in accordance with the policy in Board Minute #11, page 4951, dated February 9, 1982 (Directive #22) and Board Minute #10, page 4951 of the same date (Directive #23). These policies apply where mental disability results from organic disability. The general rule is that where a psychotraumatic disability is attributable to a compensable injury or its sequelae, there is entitlement if the psychotraumatic disability became manifest within five years of the injury or within five years of the last surgical procedure.

Mental-Physical Claims

Board policy allows compensation for cardiac claims where a causal relationship is established between the cardiac condition and the accident. One ground of entitlement for a cardiac condition is acute emotional stress with no significant delay in the onset of symptoms (Board Minute #22, p. 4878, November 25, 1980). These claims are allowed on the basis of aggravation of a pre-existing non-compensable condition. Other types of mental-physical claims are considered on a case-by-case basis.

Mental-Mental Claims

The Board compensates mental disability arising from acute stress on a case-by-case basis. A specific traumatic incident which is sudden and shocking or life threatening is required. Compensation may be granted on an aggravation basis. Chronic stress claims have not been allowed.

LEGAL AUTHORITY FOR COMPENSATING STRESS-RELATED CLAIMS

Disablement

There would appear to be little difficulty in including chronic stress claims under section 1(1)(a)(iii) of the Act as "disablement arising out of and in the course of employment".

In its determination of the issue of policy and general law concerning WCAT Decision No. 72,[20] the Board of Directors stated that "disablement" includes a condition that emerges gradually over time or is an unexpected result of working duties. This interpretation of the term disablement would allow mental-mental claims to be compensated.

In Decision No. 918, which dealt with a chronic stress claim, WCAT held that "disablement" includes situations where there has been a gradual onset of symptoms which have arisen out of and in the course of employment. In the Tribunal's view, the Act makes no distinction between organic and psychological disabilities. Furthermore, the Act does not require that the personal injury be physical in nature.

Industrial Disease

In Decision No. 918, WCAT rejected industrial disease as a route to entitlement in the case in question since there was no epidemiological evidence establishing a relationship between a disabling mental condition and the claimant's occupation. However, the Tribunal noted that in certain American jurisdictions mental illness had been classified as an industrial disease. The Panel implied that WCAT would consider epidemiological evidence establishing mental disability as an industrial disease. However, WCAT also expressed the view that the Industrial Disease Standards Panel was the appropriate body for determining whether mental disability was an industrial disease.

Application of Section 45(12)

An argument can be made that section 45(12) of the Act limits compensation for stress-related claims to temporary disability. Section 45 concerns permanent disability awards. Subsection 45(12) states:

> For the purposes of this section, "permanent disability" means any physical or functional abnormality or loss, and any psychological damage arising from such abnormality or loss, after maximal medical rehabilitation has been achieved.

It is arguable that by using the words "and psychological damage arising from such abnormality or loss" the subsection allows permanent disability awards for psychological disability only if that disability results from an initial physical injury. By referring specifically to psychological disability when it is a secondary result, the subsection can be viewed as not allowing a pension when psychological disability is the initial disability. In addition, psychological disabilities may not fit within a dictionary definition which links "functional" to a specific organ.[21] Arguably, psychological disability does not involve a loss of function of any organ.

On the other hand, it is also arguable that in psychological disability, the "mind" or brain qualifies as an "organ". In other dictionary definitions, "functional" is not necessarily tied to a specific organ. "Functional" also has the connotation of being psychological in nature.[22] Furthermore, the use of the word "any" preceding the word "functional" implies that functional should be given a wide interpretation. Additional support for a wide interpretation lies in the general principle that the Workers' Compensation Act, as remedial legislation, should be interpreted liberally. With this interpretation any type of compensable psychological injury potentially qualifies for a permanent award.

WCAT DECISION NO. 918

Decision No. 918 was the first decision in which WCAT gave detailed consideration to the question of compensation for chronic stress. Although the claim was not allowed, WCAT expressed the view that chronic mental stress claims can be compensated. In this decision, the claimant had been employed as a telephone operator since 1973 and operated a device know as a cord board until 1978. In that year, the employer introduced a new electronic switchboard system which resulted in an increase in the number of calls. In the worker's

view, the new system also increased the level of stress because it limited communication with co-workers. In the new system, an operator could no longer operate a key which would prevent a customer from hearing a discussion with co-workers. Both the old and the new systems involved electronic monitoring by supervisors for productivity and quality of service. However, the worker regarded the new system as more stressful because the supervisor doing the monitoring was not in the immediate area. After handling several calls in which customers became particularly difficult, the worker left the job, feeling that he could no longer cope with the stress. After approximately one year the worker returned to work with the accident employer, but with a job in the mailroom.

The employer acknowledged that the new system did increase the number of calls, but contended that some improvements had also been made to reduce stress. More specifically, the job became more fully automated, making it easier for the operator. In the employer's view the difference in electronic monitoring in the old and new systems was insignificant.

WCAT considered whether mental stress claims qualified for entitlement as either an industrial disease or disablement. The Tribunal rejected the industrial disease route because the designation of a condition as an industrial disease requires epidemiological evidence linking the disability to the occupation - in this case, a telephone operator. That evidence did not exist in this case. WCAT took the further view that "disablement" includes situations where there has been a gradual onset of symptoms which arise out of and in the course of employment. In its view, the claim was potentially compensable under this category.

In considering compensation for psychological disabilities in a general sense, WCAT stated at page 11 of the decision:

> ... If it can be established that a worker's anxiety and depression resulted from workplace exposure to stress, there is no reason why the worker is not entitled to benefits. The Act makes no distinction between organic and psychological disability. Nor does the Act require that the personal injury be a physical one...

In determining whether a disability arises out of the course of employment the Tribunal's usual test is whether the work was a significant contributing factor. However, the Panel observed that extremely difficult evidentiary problems arise in assessing the significance of the work contribution in stress cases because all jobs involve stress and every worker experiences stress in his or her personal life. Because of this difficulty, the Panel took the view that in stress cases, the workplace stress must "stand out" as an important cause of the disability. On page 12, the Panel formulated the matter as follows:

> To put it another way, does the presence of other stressful events, personal to the worker, lead to the conclusion that work was not a significant contributing factor?

As a general test for determining causation in stress cases, WCAT followed the Supreme Court of Maine's position in Townsend v. the Maine Bureau of Public

Safety.[23] The Maine Court agreed with Professor Larson that the distinction between acute and chronic stress was no longer viable:

> The real distinction should be, not between sudden and gradual stimuli, but between gradual stimuli that are sufficiently more damaging than those of everyday employment life to satisfy the normal 'arising out of' test and those that are not.

WCAT noted that of the American jurisdictions which have allowed chronic stress claims, half apply an "unusual stress" requirement while in the others "usual stress" is sufficient. (These tests will be considered in greater detail below).

As an example of the usual stress requirement, WCAT quoted from the Supreme Court of Hawaii in Royal State National Insurance Co. v. Labor and Industrial Relations Appeal Board:[24]

> HRS# 386-3 makes no differentiation between organic and psychic injuries arising out of the employment relationship and we do not believe this court should impose such a distinction. The Legislature has chosen to treat work-related injuries as a cost of production to be borne by industry and, ultimately, through the consumption process by the community in general. In today's highly competitive world, it cannot be doubted that people often succumb to mental pressures resulting from their employment. These disabilities are as much a cost of the production process as physical injuries. The humanitarian purposes of the Workmens' Compensation Law require that indemnification be predicated not upon the label assigned to the injury received, but upon the employee's inability to work because of impairments flowing from the condition of his employment.

The Tribunal then referred to the Townsend case on the unusual versus usual stress tests:

> Larson has endorsed yet another approach ... Under the Wisconsin rule, "the injury must have resulted from a situation of greater dimensions than the day-to-day mental stresses and tensions which all employees must experience". ... We think this standard has much to commend it and accordingly adopt it. Requiring a higher threshold level than simply the usual and ordinary pressures that exist in any working situation would erect an appropriate buffer between the employer and a host of malingering claims. It would also serve to filter out a sufficient number of cases so that an employer would not be thrust into the role of a general insurer while permitting compensation in those gradual mental injury cases which "in a just sense" can be attributed to the conditions of employment.

> While this rule would be appropriate in the vast majority of gradual mental injury cases, it would not compensate an individual who, for example, developed a psychological disability resulting from the simple day-to-day stresses of an assembly line ... our Act, however, is not merely objective covering the average person; it is also subjective and protects even the eggshell. With adequate safeguards to shield the employer, even those predisposed to mental injury should be able to recover for ordinary work-related stress to which others would not succumb. We conclude that ordinary work-related stress and strain could be compensable if it were shown by clear and convincing evidence that the trauma generated by the employment predominated in producing the resulting injury. Any less showing, however, would be insufficient adequately to protect an employer.[25]

In commenting on the Townsend test, WCAT stated:[26]

> Although the test contains the potential for undercompensation, the qualifier to the test permits a Panel to consider in an appropriate case the real merits and justice of a particular worker's case even though the workplace stress is not out of the ordinary.

WCAT also observed that personal factors are relevant in both branches of the test. For example, even if the occupational stress is unusual, there could also be personal stresses that contribute so substantially to the disability that it cannot be said that the occupational stress was a significant contributing factor.

In short, according to WCAT's interpretation of the Townsend case, compensation is payable if either:

1) The worker was subjected to greater pressures and tensions than those experienced by an average employee and (after taking into account the stresses from personal life) the occupational stress is found to be a significant contributing factor to the disability

   or

2) By clear and convincing evidence it is shown that the ordinary and usual work-related pressures predominated in producing the injury. (emphasis added)

WCAT then applied the Townsend test to the facts in the case. The Panel first considered whether the worker's occupational stress in this case was unusual as compared to everyday employment life. Whether the worker experienced more stress than co-workers was not determinative in this respect. WCAT pointed out that a whole occupational category could experience higher than average stress and it cited a study of air traffic controllers showing a very substantial incidence of stress-related disorders and high turnover rates. WCAT concluded that the telephone operators did not experience higher occupational stress than is encountered in everyday employment life. In reaching this conclusion, the

Tribunal noted that there was no evidence that telephone operators as a group had higher than average stress-related illnesses. Furthermore, the turnover rate in this job was extremely low.

In applying the second branch of the Townsend test, WCAT relied on psychiatric reports. The Panel dismissed the claim because it regarded the stresses in the worker's personal life as having overriding significance. WCAT considered it important that the worker had not seen his children in twenty years, had not had a male-female relationship for approximately fifteen years and had a limited number of social and family contacts. It pointed to the fact that the worker's mother was suffering from cancer and had been hospitalized in early 1984. Finally, WCAT noted that the worker had quit each of his previous jobs for personal reasons.

A dissenting Panel member agreed with the majority that the appropriate test in stress cases was the Townsend test. With respect to the evidentiary burden, she took the view that in stress cases it may be impossible to bring forward "especially clear evidence". The standard of proof should be on the "balance of probabilities" to avoid "unconsciously creat[ing] unreasonable standards for compensation".

The dissenting member felt that the job of telephone operator was originally stressful under the cord board system and that it had become even more stressful with the new system. In her view, the stress was greater than that encountered in everyday employment. She noted the increase in number of calls and regarded the new system of remote monitoring as more stressful.

OPTIONS FOR THE LEGAL TEST IN MENTAL-MENTAL CLAIMS

The range of options available to the Board are essentially those which have been applied by various U.S. jurisdictions. These are:

1) Mental-mental claims are never compensable.

2) Mental-mental claims are compensable only if there is a sudden stimulus.

3) Mental-mental claims are compensable where there is a "series of stressful incidents".

4) Mental-mental claims are compensable only if the stimulus is "unusual."

   "Unusual" can mean:

   a) Greater than the stress of everyday life

      or

   b) Greater than the stress of ordinary employment

      "Ordinary employment" can involve a comparison of the worker's job with the following yardsticks:

      i) Fellow employees with the same employer;

ii) Workers employed in similar jobs in that industry; or

iii) The working world at large.

5) The Townsend test used in WCAT Decision No. 918.

6) Mental-mental claims are compensable whether or not the stimulus is unusual.

7) Mental-mental claims are compensable as an occupational disease.

Comments on the Various Legal Tests

Commentators have classified the state standards in various ways. The categorization used here is somewhat complex, but was chosen to present the range of options most clearly. (The number of states in each category is included in parentheses).

1) Mental-mental claims are never compensable. (10 states)

In several jurisdictions, the relevant workers' compensation statute restricts compensation to cases involving a change to the "physical structure of the body." Courts in some of these jurisdictions have interpreted "physical" so as to preclude claims for psychological disability[27]. In several states[28] legislation specifically precludes mental-mental claims. In some states in this category the issue has not yet been dealt with directly by the highest court or legislature and claims have been allowed at lover administrative or judicial levels.

2) Mental-mental claims are compensable only if there is a sudden stimulus. (6 states)

The current WCB practice falls into this category. American courts which have adopted this criterion focus on the difficulty of establishing causation and the potential for fabricated claims.[29] In some of these states, compensability of chronic mental stress has not been addressed by the highest court or the legislature.

3) Mental-mental claims are compensable where there is a series of stressful incidents. (1 state)

4) Mental-mental claims are compensable only if the stimulus is unusual. (10 states)

a) Greater than stress of everyday life

This standard may be so vague as to be almost meaningless. Presumably, any job involves stress greater than the stress of everyday life.

b) Greater than the stress of ordinary employment

i) Fellow employees with the same employer

This is the most restrictive interpretation for "unusual". It may be the easiest test to measure objectively if there are several employees doing the same job. However, if there is only one employee undertaking a task at a specific workplace, it is impractical to apply. A more serious conceptual problem may involve workplaces where stress levels are chronically high.

ii) Workers in similar jobs but with different employers

This standard may be relatively easy to assess objectively. Arguably, the test discriminates against workers in high stress occupations (assuming that such occupations can be identified). The standard does not provide specific protection for the worker with a "thin skull" or pre-existing disability.

iii) The working world at large

In the absence of epidemiological evidence, it is difficult to objectively assess whether one occupation is characterized by higher stress than the "average job". Very few occupations have been subjected to this type of analysis.

This standard provides no specific protection for the worker with a thin skull or pre-existing disability.

5) The Townsend Test used in WCAT Decision No. 918. (No states)

This test is a hybrid of the "unusual" and "usual" tests. It essentially relies on an objective showing of unusual stress. Alternatively, it allows compensation where the ordinary stress of employment is shown by clear and convincing evidence to be the predominant cause of the disability. This second branch of the test provides a mechanism for compensating workers predisposed to mental injury. The second branch of the test no longer applies in Maine as a result of a legislative amendment in 1987. (See Appendix C).

6) Mental-mental claims are compensable whether or not the stimulus is unusual (8 states).

The test would conceivably protect the worker with a thin skull or pre-existing disability. But the opposite argument could also be made - that use of the test could dissuade some employers from hiring workers with real or suspected mental disabilities so as not to bear the risk of future compensation claims.

Within this category California employs the test of whether the workplace contribution was "active" or "passive"[30]. The workplace contribution is "passive" if it is "merely a stage for the playing out of a pre-existing condition and was either a convenient focus rather than an active force in the emergence of the psychiatric condition or was a retrospective rationalization by the employee."[31]

7) Mental-mental claims compensable as an occupational disease (2 states).

Several states have considered this approach. Under the Ontario Workers' Compensation Act specific stress-related diseases would first have to be identified. Then epidemiological and statistical evidence would be required to determine if those diseases are peculiar to or characteristic of certain occupations or processes. An initial review of the current scientific literature indicates that a solid scientific basis for drawing such conclusions does not exist.

Elaborating on the different approaches taken by the states, a report prepared by the American Association of State Compensation Insurance Funds (AASCIF) Law Committee states:[32]

> The courts in many jurisdictions are departing from the usual standard of causation in workers' compensation cases ("substantial contributing cause") and imposing more stringent causation standards like clear, direct cause, proximate cause, or even cause. In other jurisdictions, limitations are imposed upon the type of work stress that must be proven to support the claim. Some states require the specific, extraordinary or sudden and severe event. Some require that the stress be extraordinary or at least unusual and beyond the ordinary stresses of employment. A few jurisdictions have grappled with the question of whether or not the stress on the job should be measured objectively or, instead, through the claimant's eyes.
>
> Legislation has been enacted in several states, in some states to specifically recognize mental disability claims, but in more jurisdictions to prohibit or limit compensability. (See Appendix C)

Summary of the Rationales Provided by U.S. Courts in Supporting Various Tests

The main reasons advanced by U.S. courts in restricting the acceptance of chronic stress claims are:[33]

1) Risk of opening the floodgates to a host of similar claims

2) Increased costs

3) Unreliability of psychiatric evidence required to demonstrate causation

4) Risk of encouraging malingering

5) Inappropriate extension of the workers' compensation system to a system of general health insurance

6) Risk of discrimination against workers with susceptibility to mental disability

Courts which have extended compensation in chronic stress cases have supported their decisions with the following reasons:

1) The acceptance that gradual, cumulative trauma can cause physical injuries

2) The artificiality in distinguishing sudden and gradual mental injuries

3) The principle that workers' compensation legislation should be interpreted broadly

4) The generally accepted principle that the employer takes the worker "as is" (i.e. the application of the "thin skull rule").

ADDITIONAL CONCERNS

Aggravation of a Pre-Existing Mental Disability

The normal principle applied in workers' compensation law is that the aggravation of a pre-existing weakness or disease creates a compensable injury. The Board provides employers with cost adjustments through the Second Injury and Enhancement Fund in such cases. A fundamental question is whether this principle which protects workers with pre-existing disabilities should be altered in cases of mental disability. If as an adjudicative test we require a showing of "unusual" stress by some objective standard, these individuals would not appear to be protected.

Stress Claims Related to Personnel Decisions

In some American jurisdictions compensation in mental-mental claims has been allowed where the stress relates to a personnel decision. Examples include criticism of job performance, dismissal, job transfer and lay-off. Clearly these personnel decisions do contribute to stress; however, their consideration in a workers' compensation system has been controversial. Several states which allow mental-mental claims have specifically precluded claims related to such personnel decisions made in good faith. (see Appendix C)

Protection of Privacy

A serious question concerns the extent to which adjudication of chronic mental stress claims must involve a detailed examination of a claimant's personal life. In Decision No. 918, the Panel referred briefly to the intrusive nature of an enquiry into the stress in the worker's personal life, noting that the worker objected to questions about his relationships with women. However, while WCAT seemed to sympathize with claimants who would be embarrassed by such an enquiry, it did not comment on whether this type of enquiry could be avoided or minimized. Given that a key issue involved in the adjudication of these claims involves the relative contributions of occupational and non-occupational factors in producing the individual's stress-related condition, an examination of the worker's personal life will usually be inevitable.

A partial solution would be to impose severe restrictions on the scope of the inquiry into the claimant's personal life where the work has been shown to be unusually stressful. Another alternative would be to advise claimants in chronic mental stress claims that a detailed inquiry into personal life may be required. However, this could be perceived as an inappropriate attempt to

discourage workers from filing valid claims. This concern could likely be met by wording the "caution" to clearly indicate that it is not intended to discourage claims.

THE NEED FOR CONSULTATION

As can be seen from the foregoing discussion, compensation of chronic mental stress involves numerous complex legal and scientific issues. The Board welcomes comments from interested parties in developing its policy.

APPENDIX A

ALLOWANCE OF MENTAL-MENTAL CLAIMS IN CANADA

Canadian boards generally allow physical-mental claims and mental-mental claims arising from acute stress. Chronic mental-mental claims are currently allowed only in Saskatchewan and Quebec.

Saskatchewan

Saskatchewan is the only Canadian jurisdiction which has established a specific policy on compensation for chronic stress. This is found in Directive 26/87, June 5, 1987. The directive groups cases of chronic stress into three categories according to the likelihood of entitlement.

1) Improbable that work injury exists

   This category includes cases where all of the following exist:

   a) The worker is diagnosed as having either an endogenous depression or a chronic anxiety state with a history of symptoms with or without work loss going back for some time.

   b) The worker is not employed in an occupation where "burnout" is known to be a problem.

   Claims in this category are denied unless a specific event or series of events provoke a relapse in a previously well-functioning individual.

2) Doubtful that work injury exists

   In these claims the work situation is not expected to cause a psychological disability but could do so in certain instances. These cases must be assessed by a complete investigation including interviews with the worker and worker's family, co-workers and employer. If there is any doubt as to allowance of the claim, complete psychological and psychiatric assessments must be undertaken. If it is probable that work rather than external factors is responsible for the disability, compensation will be awarded. Specific events or working conditions, including increased workload, sexual harassment and staff shortages have been considered as relevant factors in allowing claims.

3) Probable that work injury exists

   This category includes workers engaged in "stressful occupations". The Directive mentions school teachers and air traffic controllers as examples.

Quebec

The Commission de la santé et de la securité du travail (C.S.S.T.) has not issued a formal policy on chronic stress claims. However, both the C.S.S.T. and the appeal tribunal, the Commission d'appel en matière de lésions professionnelles (C.A.L.P.) have allowed such claims. Generally, these have involved harassment by supervisors or coworkers. In one decision, a supervisor received compensation due to stress brought on by his staff.

In a recent decision, Soubigou v. Maloso Inc. and C.S.S.T.[34], the C.A.L.P. allowed a claim in which chronic stress resulted from overwork over a period of several months. Successful claims have also involved sexual and racial harassment.

APPENDIX B

U.S. CLAIMS EXPERIENCE

The volume and cost of claims will vary directly with the liberality of the standard for allowance in each jurisdiction. Some of these jurisdictions are just beginning to allow stress claims. However, in others where stress claims have been allowed, courts and state legislatures have recently imposed more severe restrictions.

Information is included from four states: California, Oregon, Maine and Wisconsin. California and Oregon were chosen because they appear to be the only two states for which detailed statistical information has been gathered. Maine is included because for the period 1979 - 1987 it applied the Townsend test used by WCAT in Decision No. 918. Wisconsin is an example of a state which applies the "unusual stress" test and uses other workers in the same industry as the standard of comparison.

California

In April 1988, the California Workers' Compensation Institute published the results of its survey of mental stress claims[35]. The study included all claims with a mental component filed over a one month period in 1987. The percentage of claims by category was:

mental-mental	38%
physical-mental	48%
mental-physical	19%

The study concluded that:

1) The incidence of mental stress claims grew 430% during 1980-1986. However the true incidence of such claims may be much higher than this figure because the study was based on statistics from the employer's first report of occupational injury or illness form. The study notes that a substantial but unknown number of claims are not reported to the compensation board by firms because the employers take the position that they are not work-related. Most mental stress claims originate with an application filed by the worker's lawyer.

   It should also be noted that California's legislative standard for acceptance of such claims is probably the most liberal in the United States. The study points out that part of the increase in stress claims has resulted from active solicitation of claims by workers' representatives in daily newspapers and in radio commercials.

2) "Job pressures" and "harassment" are the most frequently alleged causes of mental stress claims.

3) Almost all mental stress claims are contested.

4) Almost twice as many stress claims are disalloved as compared to other disputed cases.

5) The average cost of mental stress claims resolved in 1987 averaged $7,450 as compared with the estimated average of $10,500 for other cases. Typically, in a mental stress case

   a) the worker's medical bills are low,
   b) there is little time lost from work and
   c) there is limited involvement with vocational rehabilitation.

6) Workers in white collar jobs account for only 20% of total disabling injuries but account for two thirds of all mental stress claims. Almost four in ten white collar stress claimants work in clerical jobs. This occupational pattern appears to support the view in the scientific literature that mental stress is most prevalent where the worker has little control over the work environment.

7) Twenty percent of all mental stress claims are filed within four months of commencing employment, while 43% of such claims are filed within a year of commencing employment. This is similar to the figures for physical injuries, where accidents often result from a new employee's unfamiliarity with the job or work environment.

Oregon

In 1987 the Oregon Department of Insurance and Finance completed a study[36] of mental stress claims from 1980-1986. During this period Oregon applied a "usual stress" standard. In response to the more than 300 percent increase in disabling mental stress claims filed during that time the Oregon legislature tightened the standard in 1987 so as to require that the source of the stress be unusual. It also imposed a more stringent evidentiary standard and precluded reasonable disciplinary or job performance evaluation actions. The study analyzes claims prior to that change.

The study revealed that 71% of mental stress claims were denied. A total of 746 claims were accepted of which 215 were accepted in 1986. Accepted claims were examined in terms of nature of illness, age, sex and occupation. The majority of claims were in the mental-mental category. About 38% of the claims were for individuals in the 30-39 year age bracket. For most years claims by women outnumbered those made by men. In terms of occupation, 44.5% involved state and local government workers.

Contrary to the findings of the California study, the Oregon statistics indicate that compensation costs for stress claims are higher than for other claims. The average total cost of a stress claim first closed in 1985 was 2.7 times the average for all claims.

Maine

Although Maine no longer follows the Townsend test, the statistics included below cover a period in which the Townsend test was in effect. In an internal document,[37] an official of the Maine Commission reports an increase similar to that in California but on a smaller scale:

Year	Disabling Mental Stress Injuries	% of Disabling Injuries
1980	31	0.2
1981	37	0.2
1982	36	0.2
1983	60	0.3
1984	*	*
1985	142	0.6

Disabling injuries involve one or more days of lost time.

* data is not available for 1984

These figures are for the number of claims filed. No figures are available on the number of successful claims. However, the report notes that a very high percentage of these claims are litigated and claimants only win in the minority of situations.

Wisconsin

Wisconsin is representative of a jurisdiction which requires that the stress be greater than that faced by others in the same occupational group. This is a more restrictive test than found in Townsend and in WCAT Decision No. 918. For example, under the Wisconsin test, a transport truck driver's claim for occupational stress would be measured against the typical stresses faced by the average transport truck driver in Wisconsin. In Wisconsin, chronic mental stress claims have been compensated since 1976. Precise statistics on the number of such claims filed and alloved in Wisconsin are not available. However, the head of Legal Services at the Wisconsin Workers' Compensation Commission estimates that roughly 100 mental stress claims are filed annually and that approximately 20 to 30 are accepted. The most common type of claim involves harassment by supervisors or co-workers.

APPENDIX C

SUMMARY OF U.S. LEGISLATION SPECIFICALLY CONCERNING COMPENSATION FOR MENTAL-MENTAL CLAIMS[38]

California

Section 3208.1 of the California Labor Code establishes a statutory definition of injury which recognizes cumulative injuries caused by repetitive mental activities. Administrative regulations effective August 1, 1987 require that the psychiatric disability be defined using DSM-III criteria, the disability be analyzed in terms of the effect of the mental disorder on eight basic work functions, and that medical-legal reports evaluate causation by consideration of the work exposure as compared to the disability, possible non-industrial causes and whether there was "active" or "passive" contribution of the workplace to the disability.

Colorado

In 1986 Colorado passed legislation specifying that injuries due to emotional or mental stress are compensable only if they are:

1) supported by the opinion of a certified physician or psychologist
2) the stress results mainly from the claimant's then occupation and place of employment
3) the source of stress is not common to all employment
4) the mental disability is severe enough, in and of itself, to disable the claimant or require medical or psychological treatment.

Maine

Legislation in Maine which took effect on September 29, 1987 (39 MRSA Sec. 51(3)) states:

> "Mental injury resulting from work-related stress does not arise out of and in the course of employment unless it is demonstrated by clear and convincing evidence that:
>
> A. The work stress was extraordinary and unusual in comparison to pressures and tensions experienced by the average employee; and
>
> B. The work stress, and not some other source of stress, was the predominant cause of the mental injury.
>
> The amount of work stress shall be measured by objective standards and actual events rather than any misperceptions by the employee. A mental injury is not considered to arise out of and in the course of employment if it results from any disciplinary action, work evaluation, job transfer, layoff, demotion, termination or any similar action, taken in good faith by the employer."

Massachusetts

The Massachusetts definition of "personal injury" states in part:

> "... Personal injuries shall include mental or emotional disabilities only where a significant contributory cause of such disability is an event or series of events occurring within the employment. No mental or emotional disability arising principally out of a bona fide, personnel action including a transfer, promotion, demotion, or termination except such action which is the intentional infliction of harm shall be deemed to be a personal injury with the meaning of this chapter." (Mass. Statutes C.152, Sec. 1(7A).)

The language concerning personnel actions was added in 1986.

Michigan

In 1982 Michigan amended its legislation to read:

> Mental disability shall be compensable when arising out of actual events of employment not unfounded perceptions thereof (M.C.L.A. Sec. 418.401(2)(b)).

This amendment was passed to override the Michigan Supreme Court's decision in Deziel v. Difco Laboratories Inc., 268 N.W. 2d 1 (Mich. 1978) according to which compensation could be allowed even if the claimant inaccurately perceived his or her job to be stressful. This is known as the subjective test.

Another section of the 1982 legislation allows mental claims to be compensable if the employment was a substantial contributing factor to, or aggravated or accelerated the condition.

Montana

Legislation passed in 1987 redefined "injury" to preclude claims for physical or mental conditions arising from:

1) Emotional or mental stress;

   or

2) A non-physical stimulus or activity.

This eliminated the compensability of all mental-mental and mental-physical claims.

New Mexico

Legislation enacted in 1987 allows mental-mental claims and physical-mental claims. The definition of "impairment" includes physical impairment, primary mental impairment and secondary mental impairment. Primary mental impairment is

defined as a mental illness arising from an accidental injury which involves no physical injury and consists only of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances. Secondary mental impairment is defined as a mental illness resulting from physical impairment caused by an accidental injury. The legislation precludes stress claims which arise from disciplinary, corrective, or job evaluation or termination of the worker's employment. (Sec. 52-1-24 of the New Mexico Statutes)

Ohio

Legislation enacted in 1986 appears to be intended to disallow compensation of mental-mental claims. This legislation defines "injury" to exclude "1) psychiatric conditions except where the conditions have arisen from an injury or occupational disease ..." (R.C. 4123-01(C)).

Oregon

Legislation passed in 1987 requires that for a mental-mental claim to be allowed, the source of the stress must be unusual. If the source of stress is a reasonable disciplinary or job performance evaluation action the claim is not compensable. Furthermore, there must be clear and convincing evidence that the mental disorder arose out of and in the course of employment. (H.B. 2271).

Before this legislation gradual stress mental-mental claims were potentially compensable with no requirement for unusual stress.

Rhode Island

Mental injuries are compensable as an occupational disease. Subdivision 36 of Section 28-34-2 (Rhode Island General Laws) enacted in 1982 reads:

> "The disablement of an employee resulting from mental injury caused or accompanied by identifiable physical trauma or from a mental injury caused by emotional stress resulting from a situation of greater dimensions than the day-to-day emotional strain and tension which all employees encounter daily without serious mental injury shall be treated as an injury as defined in Section 28-29-2(4)."

A current Bill (#88-H8079) would eliminate "compensable mental injury" from the occupational disease category and the definition of "injury" would be amended as follows:

"(c) The total disability of an employee resulting from a mental injury caused by emotional stress shall be treated as a personal injury when:

(i) The mental injury is caused by identifiable objective emotional stress peculiar to the person's employment.

(ii) The emotional stress experienced by the employee is

identified by competent medical testimony as the sole cause of the total disability. The fact that the emotional injury experienced by the employee causes or precipitates physical symptoms shall not relieve the employee from the burden of proving the elements set forth above."

Wisconsin

Mental-mental claims are compensable in Wisconsin. Section 102.01 of the Wisconsin Act requires that the mental disability must arise from conditions "beyond those common to occupational or nonoccupational life".

FOOTNOTES

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11. Interview with Dr. Lawrence Murphy, Research Psychologist, NIOSH, Cincinatti, 5 January, 1989.

12. At page 5.

13. T.H. Holmes and R.H. Rahe, "The Social Readjustment Rating Scale," Journal of Psychosomatic Research, (1967) Vol.11, p. 213-218.

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16. J.S. House, Work Stress and Social Support (Reading: Addison-Wesley, 1981).

17. Rogers, Joy "Life event stress: implications for the workplace," Canada's Mental Health (September, 1984) p.2-5.

18. Joseph, "The Causation Issue in Workers' Compensation Mental Disability Cases: An Analysis, Solutions and a Perspective", 36 Vand. L. Rev. 263, 273 (1983).

19. 1B A. Larson, The Law of Workmen's Compensation, Section 42.20 (1987)

20. Released on September 28, 1988.

21. In Webster's New World Dictionary, rev. ed. (1979) one of the definitions of "functional" is: "affecting the function of some organ without apparent organic changes".

22. Webster's Ninth New Collegiate Dictionary (1986) defines "functional" as: "of connected with or being a function; affecting physiological or psychological functions but not organic structure."

    In Dorland's Illustrated Medical Dictionary, 27th ed. (1988) the definition reads: "1. of or pertaining to a function; 2. affecting the function but not the structure; said of disturbances of function with no detectable organic cause."

23. 404 A. 2d 101.

24. 487 P. 2d 278 (1971).

25. Op. cit., note 23.

26. At page 16.

27. e.g. Kansas.

28. e.g. Montana and Ohio.

29. See Pathfinder Company vs. Industrial Commission, 343 N.E. 2d 913 (1976).

30. Albertson's v. Workers' Comp Appeals Board, 131 Cal. App.3d 308 (1982).

31. H. Laskey, "Taking the Mystery out of Psychiatric Claims: The New California Guidelines", NCCI Digest, Vol. 2 No. 4 (December 1987) p. 55-65.

32. American Association of State Compensation Insurance Funds, Stress-Based Workers' Compensation Claims: A Jurisdictional Survey (Grand Rapids: American Association of State Compensation Insurance Funds, 1988), p.2.

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